

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5023 of 1996

cr

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

-----  
RAJESHBHAI RAMESHBHAI DHODIYA PATEL

Versus

COMMISSIONER OF POLICE

-----  
Appearance:

MR ANIL S DAVE for Petitioner

Mr. Nigam Shukla, learned Addl. P.P. for the respondents.

-----  
CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/09/96

ORAL JUDGMENT ;

1. Through this Special Civil Application filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the detention order dated 15-4-96 passed by the Police Commissioner, Surat City under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

2. The grounds of detention show that three criminal cases, pertaining to the period 1994 to 1996, were pending trial against the petitioner. The offences include Sections 307, 323, 504 and 506 and 114 of the IPC and Section 135 of the Bombay Police Act. Besides these three cases, certain victims of the petitioner have also deposed against him with regard to the incidents dated 7-4-96, 28-3-96 and 31-3-96 and on account of being frightened by the threat of the petitioner they have not made any report in the Police. On the basis of the aforesaid criminal cases and the statements of the witnesses, as aforesaid, the detaining authority found that the petitioner did create fear amongst the people and the person and property of the people is in peril in the concerned area and the daily life of people is disturbed on account of the violent and criminal activities of the petitioner.

3. This Special Civil Application was filed in this court on 11-7-96 and on 12-7-96 rule returnable for 19-8-96 was issued. However, as usual, in this case also the respondents have not cared to file the reply nor any affidavit of the detaining authority is filed and there is no denial of the factual assertions made by the petitioner.

4. Mr. Dave has submitted that he had submitted a representation dated 10-7-96 to the State Home Minister and in this representation he had also demanded the copy of the cross complaint, which had been filed by him with regard to one of the three criminal matters, as aforesaid. He has made a grievance that the copy of this cross complaint was not supplied to him despite his demand. According to Mr. Dave this representation dated 10-7-96 had been received by the Home Minister on 11-7-96, yet the representation was rejected on 25-7-96 and there is no explanation for this intervening period of 15 days and he has further submitted that the copies of the documents asked for by him had also been supplied to him on 17-8-96 after rejecting his representation and he submits that even if the detention order is found to be valid at the time when it is passed, the continued detention can not be sustained because the respondents were under an obligation to supply the copies of the cross complaint at the time when the detention order was passed alongwith the grounds of detention and in the instant case it has been supplied to him even after the rejection of the representation. Though the reply has not been filed, The learned Addl. P.P. has orally submitted that the representation dated 10-7-96 was

received in the Department on 23-7-96 and the representation was rejected on 25-7-96. The learned Addl. P.P. has also submitted that the copies of the cross complaint, which had been demanded by the petitioner in the representation dated 10-7-96, was supplied to him on 17-8-96 whereas the representation has been rejected on 25-7-96.

5. Whereas Mr. Dave has cited before me an unreported decision of this Court rendered on 16-9-94 in Special Criminal Application No. 1960 of 1993 and the Special Civil Application came to be disposed of on the ground of non supply of the documents or the supply of the documents after the rejection of the representation, I need not go into the other grounds on which the detention order had been challenged. The Division Bench in the aforesaid case has taken the view that the copy of the cross complaint is a vital document and while relying upon the Supreme Court decision in M. Ahmed Kutty's case, reported in (1990) 2 SCC 1, the Court has found that in such cases the non supply of the vital document like cross complaint resulted into the vitiating of the subjective satisfaction. The view taken by the Division Bench in this case applies with full force on the facts of this case. In this case it is a factually conceded position by the other side that the copy of the cross complaint asked for by the petitioner in the representation dated 10-7-96 was supplied to him on 17-8-96 whereas the representation had been rejected on 25-7-96. Therefore, even if it is taken that the representation was received in the Department on 23-7-96 and not on 11-7-96, as has been pointed out by Mr. Shukla, there is no escape from the consequences of the failure of the supply of the vital document like a cross complaint before rejecting the representation. Therefore, the consideration of the petitioner's representation at the time of rejecting the representation stands vitiated and the detention can not be allowed to continue any more. The petitioner is under detention since 15-4-96 i.e. right from the date of the passing of the detention order and his detention now can not be held to be justified in view of the factual position, as pointed out above.

6. The net result is that the petition is allowed. The detention order dated 15-4-96 passed by the Police Commissioner, Surat City is hereby quashed and set aside and the detenu is directed to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

